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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
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11 FERNANDO DUARTE,

12 Petitioner,

13 v.

14 STEVEN SMITH, Acting Warden,

15 Respondent.
16

Case No. 2:22-cv-07590-FMO-JPR

**ORDER ACCEPTING
MAGISTRATE JUDGE'S REPORT
AND RECOMMENDATION**

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18 Pursuant to 28 U.S.C. § 636, the Court has reviewed the Petition, the other
19 records on file herein, the Magistrate Judge's Report and Recommendation,
20 Petitioner's Objections to the Report and Recommendation, and Petitioner's
21 separate "Declaration" filed with the Objections.

22 The Report and Recommendation ("Report") recommends denial of the
23 Petition and dismissal of this action with prejudice. (ECF No. 34.) Petitioner's
24 Objections to the Report and his Declaration (ECF Nos. 35-36) do not warrant a
25 change to the Magistrate Judge's findings or recommendation.

26 Petitioner raises a "broad objection" that he is entitled to habeas relief for a
27 claim under *Brady v. Maryland*, 373 U.S. 83 (1963). (ECF No. 35 at 3-5.) But
28 Petitioner failed to raise a *Brady* claim. No *Brady* claim is suggested in the

1 Petition. (ECF No. 1 at 12-18.) Nor did Petitioner seek to amend his Petition to
2 add a *Brady* claim. Petitioner also does not specify what the alleged *Brady*
3 evidence is. (ECF No. 35 at 3-5.) Petitioner filed this “broad objection” before, but
4 the Court struck it from the docket because it was conclusory and appeared
5 irrelevant to the current case. (ECF Nos. 29, 31.) For the same reasons, the
6 objection is overruled. *See Davis v. Washington State Department of Corrections*,
7 2021 WL 3674477, at *2 (9th Cir. 2021) (irrelevant objection is properly overruled)
8 (citing *United States v. Howell*, 231 F.3d 615, 621-23 (9th Cir. 2000)).

9 Petitioner objects that the Magistrate Judge erroneously determined that his
10 claims of instructional error, in Grounds Four and Five, are unexhausted. (ECF No.
11 36 at 3.) The Court previously accepted and again concurs with the Magistrate
12 Judge’s earlier Report that the claims in Grounds Four and Five are unexhausted
13 because Petitioner never fairly presented the federal nature of these claims to the
14 California Supreme Court. (ECF No. 14 at 6-8; *see also* ECF No. 11-2 at 26-29.)

15 Petitioner objects that he should be granted a stay for Grounds Four and Five
16 under *Rhines v. Weber*, 544 U.S. 269 (2005). (ECF No. 36 at 4.) But Petitioner
17 initially elected to voluntarily dismiss Grounds Four and Five, rather than seek a
18 stay. (ECF No. 15.) The Court concurs with the Report that Petitioner did not
19 show good cause for a *Rhines* stay, which he requested nearly a full year after
20 voluntarily dismissing the claims and without any evidence of attempting to
21 exhaust them during that time. (ECF No. 34 at 12-14.)

22 The Court accepts the findings and recommendations of the Magistrate
23 Judge.

24 ACCORDINGLY, IT IS ORDERED THAT:

- 25 1. Petitioner’s request for a *Rhines* stay is denied.
 - 26 2. The Petition’s remaining claims are denied with prejudice.
 - 27 3. Judgment be entered consistent with this order.
- 28

4. The clerk serve this Order and Judgment on all counsel or parties of record.

DATED: September 23, 2024

/s/

FERNANDO M. OLGUIN
UNITED STATES DISTRICT JUDGE